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Supreme Court, U.S.

FILED

JAN 13 1987

JOSEPH F. SPANIOL, JR.
CLERK

No. 86-900

IN THE
Supreme Court of the United States

OCTOBER TERM, 1986

LEO O. LABRANCHE, JR.,

Petitioner,

vs.

**UNITED STATES OLYMPIC COMMITTEE,
a corporation,**

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**REPLY BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

RICHARD A. PERKINS
Suite 406
1801 Avenue of the Stars
Los Angeles, California 90067
(213) 553-2274

Counsel for Petitioner

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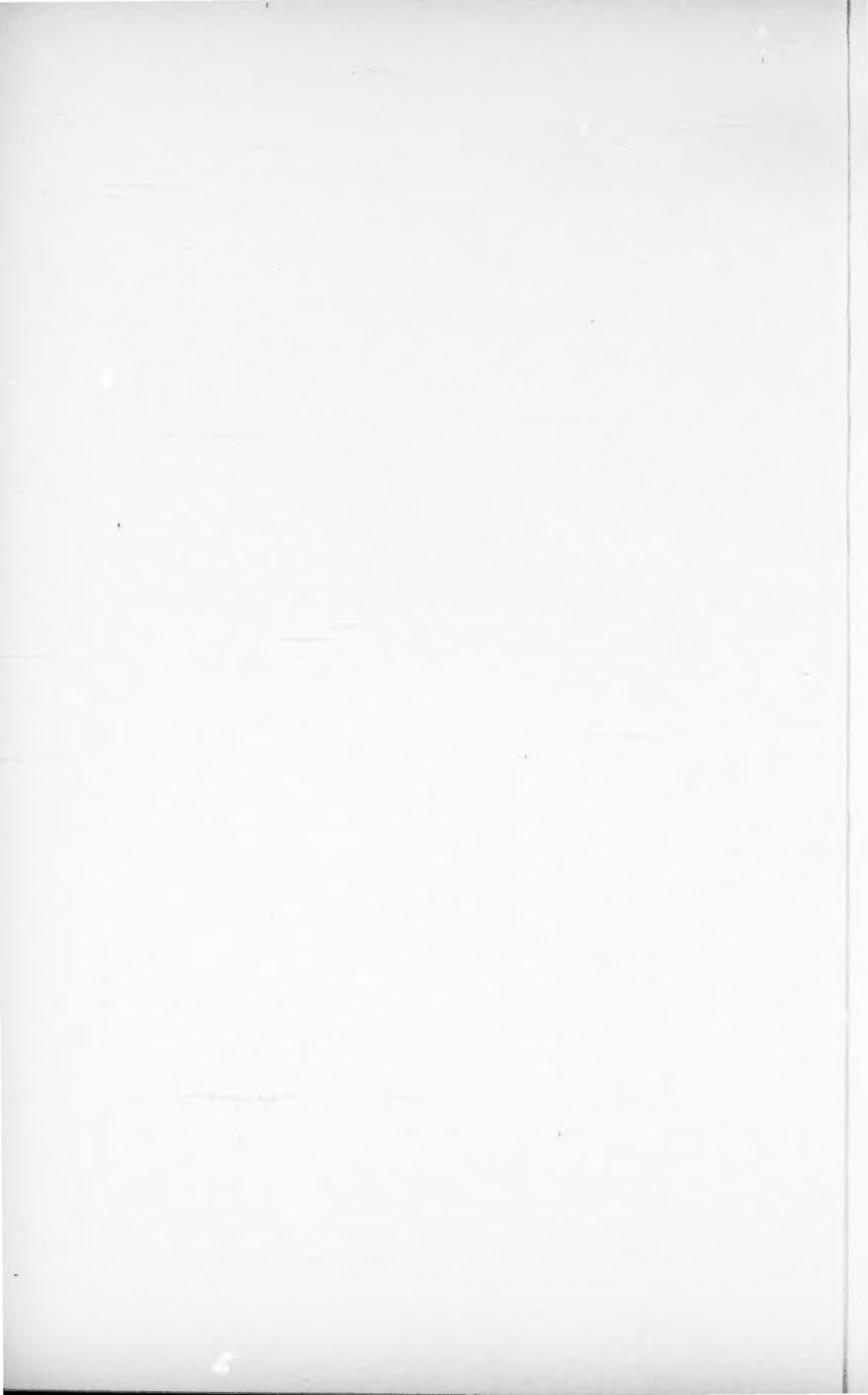


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In opposition to the petition for writ of certiorari herein the respondent has submitted a "Memorandum" that does not mention the merits of the cause. Instead, it merely objects on grounds of jurisdiction, standing, and expediency. As we shall briefly point out, respondent's contentions are based on a misapprehension of the state of the record in this case and in No. 86-270 and are otherwise insubstantial.

1. Invoking this Court's Rule 18, respondent asserts that this case lacks sufficient importance to be considered by this Court before decision by the court of appeals. Of

course, this Court is the judge of how best to dispose of its resources. We have pointed out how more than a thousand business enterprises are at risk of hostile action on the part of the respondent by which they may be subjected to the injunctive suppression of their trade names, the seizure and destruction of their goods, packages, labels, and advertising, and the imposition of damages and attorney fees on them, so that when the opportunity offers, as it now does, early consideration should be given to the important question of the scope and effect of the Amateur Sports Act of 1978, § 110, 92 Stat. 3048, 36 U.S.C. § 380, as applied to petitioner and many others similarly situated.

2. Respondent asserts that there is an “issue of the Court of Appeals’ jurisdiction” in this case because petitioner, then acting *pro se*, filed a notice of appeal before judgment was entered in the district court. There is no such issue. On October 21, 1985, the district court announced its decision to grant respondent’s motion for summary judgment (App. 1, Petition for Certiorari). The notice of appeal was filed November 18, 1985 (Petition, p. 1). Judgment was entered November 21, 1985 (Petition, App. 3). The timeliness of the notice of appeal is established by Rule 4(a)(2), Federal Rules of Appellate Procedure, which in pertinent part provides that with exceptions not here material, “a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after such entry and on the day thereof.”

3. On behalf of respondent it is objected that petitioner lacks standing because he allegedly complains of an injury to a corporation and not to him personally. That is incorrect. Although he happens to be a shareholder in a New York corporation, he was engaged in business as a sole proprietor under a trade name that was challenged, and he

sued individually for wrongs done him individually in preventing him from incorporating his business in California and from registering a trade name of his business as a trade mark; moreover, respondent counterclaimed against petitioner individually and obtained a judgment against him individually for injunctive and other relief. Respondent's objection to petitioner's alleged lack of standing is completely without merit.

4. As respondent states, the constitutionality of § 110 of the Amateur Sport Act, 36 U.S.C. § 380, is already challenged in No. 86-270; however, the constitutional challenge involves the application of the statute in different circumstances, and the different facts of No. 86-270 render it uncertain whether the decision in that case will control this one, or whether the extant stay of this case pending resolution of No. 86-270 will merely delay the disposition of this one. Accordingly, the pendency of No. 86-270 is not reason enough to withhold review of this case.

CONCLUSION

For the reasons stated, respondent's objection on grounds of jurisdiction, standing, and expediency are without merit. The petition for writ of certiorari should therefore be granted.

Respectfully submitted,

RICHARD A. PERKINS

Counsel for Petitioner